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REPORT OF THE SECRETARY-GENERAL ON THE ESTABLISHMENT OF THE COMMISSION OF EXPERTS PURSUANT TO PARAGRAPH 1 OF SECURITY COUNCIL RESOLUTION 935 (1994) OF 1 JULY 1994

I

1. In the Statement by the President of the Security Council of 30 April 1994 (S/PRST/1994/21), the Council condemned all breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population, and recalled that persons who instigated or participated in such acts were individually responsible. It further recalled, in that context, that the killing of members of an ethnic group with the intention of destroying such group, in whole or in part, constituted a crime punishable under international law. By that Statement, I was requested, inter alia, to make proposals for investigation of the reports of serious violations of international humanitarian law during the conflict.

2. In its resolution 918 (1994) of 17 May 1994, the Security Council reiterated its condemnation of the continued killing of civilians with impunity, and recalled that such killings constituted a crime punishable under international law. In paragraph 18 of that resolution, the Council requested me to present a report as soon as possible on the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict. In its resolution 925 (1994) of 8 June 1994, the Council noted with grave concern the reports indicating that acts of genocide had occurred in Rwanda and recalled that genocide constituted a crime punishable under international law.

3. In my report on the situation in Rwanda of 31 May 1994 (S/1994/640), I noted that massacres and killings were continuing in a systematic manner throughout Rwanda, and indicated that only a proper investigation could establish the facts and definite culpability. In paragraph 36 of that report, I concluded, on the basis of the findings and evidence of the special mission to Rwanda, that there could be little doubt that the large-scale killings of communities and families belonging to a particular ethnic group constituted genocide.

4. By paragraph 1 of its resolution 935 (1994) of 1 July 1994, the Security Council requested me to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to

the said resolution, together with such further information as the Commission of Experts may obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur of the Commission on Human Rights on Rwanda, with a view to providing me with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide.

5. The present report is submitted pursuant to the request contained in paragraph 3 of Security Council resolution 935 (1994).

II

6. Members of the Security Council may recall that a parallel initiative has been taken by the Commission on Human Rights. In its resolution S-3/1 of 25 May 1994, the Commission requested its Chairman to appoint a Special Rapporteur to investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation from Governments, individuals and intergovernmental and non-governmental organizations, including on the root causes and responsibilities for the recent atrocities. The Commission requested the Special Rapporteur to visit Rwanda and report on the human rights situation in that country, including recommendations for bringing violations and abuses to an end and preventing future violations and abuses. The Special Rapporteur was also requested to gather and compile systematically information on possible violations of human rights and acts that may constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide, in Rwanda and to make that information available to me. The Special Rapporteur presented his report on the situation of human rights in Rwanda on 29 June 1994 (E/CN.4/1995/7).

7. In establishing the Commission of Experts, as requested by the Security Council, I have taken note of the similarity between the mandates entrusted to the two investigative bodies. With a view to avoiding unnecessary overlapping and to ensuring maximum cooperation between the two bodies, I have decided to establish the Commission of Experts in a way that would maximize the efficient use of scarce resources and reduce costs. I expect that the Special Rapporteur of the Commission on Human Rights will cooperate closely with the Commission of Experts and provide it with all the information at his disposal. I shall take the necessary administrative steps to ensure continuing collaboration between the two bodies.

8. The terms of reference of the Commission of Experts, as set out in Security Council resolution 935 (1994), will be to examine and analyse the information submitted pursuant to the said resolution, together with such further information as the Commission of Experts may obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur of the Commission on Human Rights on Rwanda, with a view to providing me with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of specific acts of genocide. Given the urgency of the matter, I hope that that report will be submitted well within

four months of the establishment of the Commission of Experts as envisaged by the resolution, and in any event not later than 30 November 1994.

9. In considering how best to bring about an early report to the Security Council, it is envisaged that the work of the Commission of Experts will be in two stages. In a first stage, the members of the Commission will review and update the information that is available from all sources and carry out its own investigations in Rwanda to complement those already undertaken by the Special Rapporteur. That task should be accomplished within the first weeks of the Commission's existence.

10. The second stage of the Commission's work will be to draw up its conclusions on the evidence of specific violations of international humanitarian law, and in particular acts of genocide, on the basis of which identification of persons responsible for those violations could be made. In the light of these conclusions, the Commission will examine the question of the jurisdiction, international or national, before which such persons should be brought to trial.

11. I have, therefore, decided to establish a Commission of Experts, to be composed, in the first instance, of three members, one of whom will be designated, by me, as the Chairman. In selecting the members, I will take into account their qualifications in the areas of human rights, humanitarian law, criminal law and prosecution, as well as their integrity and impartiality. I shall notify the Security Council shortly of my appointments. I reserve the right to expand the membership of the Commission as necessary.

12. The members of the Commission will serve in their personal capacity.

13. The Commission will adopt its own rules of procedure. In the absence of consensus, decisions of the Commission will be taken by a majority vote.

14. For reasons of efficiency, practicality and economy, the Commission will be located at the United Nations Office at Geneva, where it will benefit from the resources of the office of the United Nations High Commissioner for Human Rights and its substantive, secretarial and administrative assistance. To the extent possible, and in order to avoid duplication, the Commission will also rely upon the resources already made available to the Special Rapporteur of the Commission on Human Rights.

15. Arrangements for the financing of the Commission of Experts will be made. In addition, I will take steps to establish a Trust Fund to receive voluntary contributions from States, intergovernmental and non-governmental organizations, as well as natural and juridical persons, to assist the Commission of Experts in carrying out its plan of work.

16. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 1/ will apply to the Commission and its members. The members of the Commission will have the status of experts on missions within the meaning of article VI of the Convention.

Notes

1/ Resolution 22 A (I).